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Federal Communications Commission

DA 97-2062

DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-135
Table of Allotments,) RM-9087
FM Broadcast Stations.)
(Spring Valley, Minnesota, and)
Osage, Iowa)¹)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 17, 1997

Released: September 26, 1997

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making and Order to Show Cause, released May 23, 1997, DA 97-1047, proposing the substitution of Channel 282C3 for Channel 282A at Spring Valley, Minnesota. The Notice was issued in response to a petition filed by KVGO, Inc. ("KVGO"). KVGO also requested modification of its license for Station KVGO(FM) to specify operation on the higher class channel. KVGO filed comments restating its interest in the allotment of Channel 282C3 at Spring Valley. James Ingstad Broadcasting, Inc. ("Ingstad") filed reply comments.

2. As stated in the Notice, Channel 282C3 can be allotted to Spring Valley in compliance with the Commission's spacing requirements provided Channel 279A at Osage, Iowa, is deleted. KVGO proposed the substitution of Channel 254A for Channel 279A and modification of the license for Station KCZY-FM to specify operation on the new channel at its existing site.

3. Ingstad, licensee of Radio Station KCZY-FM, Osage, Iowa, filed reply comments in response to the Notice. Ingstad seeks assurances that it will be reimbursed by KVGO for the costs of the channel change at Osage as proposed by KVGO. Ingstad points out that Station KCZY-FM has been in operation for more than 17 years and believes significant expenses will be incurred to ensure that its listeners are fully apprised of the channel change. Ingstad states that it is incumbent on KVGO to demonstrate that they will promptly reimburse Ingstad for such expenses as they are incurred and that until such a demonstration can be made, Ingstad should not be forced to change its channel and incur these expenses.

¹ The caption has been corrected to read Spring Valley in lieu of Spring Grove.

4. After careful consideration of the proposal, we conclude that the public interest would be served by the channel substitution at Spring Valley, Minnesota, as a wide coverage area service will be provided to the community. In order to accomplish the substitution at Spring Valley, Channel 254A must be substituted for Channel 279A at Osage, Iowa. Both substitutions can be made in compliance with the Commission's minimum distance spacing requirements.² In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license for Station KVGO(FM), Spring Valley, Minnesota, to specify operation on Channel 282C3. We shall also modify the license for Station KCZY-FM, Osage, Iowa, to specify operation on Channel 254A in lieu of Channel 279A in accordance with the Commission's Rules. James Ingstad Broadcasting, Inc., licensee of Station KCZY, Osage, Iowa, did not provide any information in response to the Order to Show Cause as to why its license should not be modified to specify operation on Channel 254A.³ Accordingly, pursuant to Section 1.87 of the Commission's Rules, James Ingstad Broadcasting, Inc. is deemed to have consented to the proposed modification.

5. Pursuant to Commission policy, reimbursement to Station KCZY-FM for the reasonable costs of changing its frequency will be governed by Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). In response to Ingstad's concerns, we expect the parties to negotiate in good faith, subject to Commission review only in the event of disagreement. See Mayfield and Wickliff, Kentucky, 48 RR 2d 1232 (1981). Finally, we note that Station KCZY-FM need not take steps to change frequency until it is assured that it will receive payment. See Churchville and Luray, Virginia, 5 FCC 1106 (1990), recon. denied, 6 FCC Rcd 1313 (1991). KVGO has acknowledged its responsibility to reimburse Station KCZY, Osage, for the reasonable costs in changing frequency.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 10, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

² The coordinates for Channel 282C3 at Spring Valley are 43-38-23 and 92-38-30. The coordinates for Channel 254A at Osage are 43-19-20 and 92-51-22.

³ In reply comments dated July 29, 1997, Ingstad contends that it was not properly served with a copy of the Notice in this proceeding. Specifically, Ingstad alleges that it "did not receive a copy of the Notice until recently and review of the Commission's Docket reveals that there is no receipt for a certified mailing in the Docket file for this proceeding, as required by the Notice itself." While Commission records do indicate that a copy of the Notice was mailed by Certified Mail, Return Receipt Requested, to Ingstad Broadcasting, Inc. on June 19, 1997, we agree that there is no record of the return receipt in the Docket for this proceeding. However, due to the fact that Ingstad had actual notice of the Notice/Order to Show Cause and did indeed file timely reply comments, we believe that this constitutes harmless error. Further, Commission records indicate that no additional comments have been received from Ingstad since July 29, 1997. Under these circumstances, we feel it is reasonable to act on the proceeding based upon the current record.

<u>Community</u>	<u>Channel Number</u>
Spring Valley, Minnesota	282C3
Osage, Iowa	254A

7. IT IS FURTHER ORDERED, That the Secretary of the Commission, shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

James Ingstad Broadcasting, Inc.
Station KCZY
200 North 7th Street
Osage, Iowa 50461

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KVGO, Inc., for Station KVGO(FM), Spring Valley, Minnesota, IS MODIFIED to specify operation on Channel 282C3 in lieu of Channel 282A, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program

tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station KCZY-FM, Osage, Iowa, IS MODIFIED, to specify operation on Channel 254A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-930616KD except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-930616KD, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KVGO, Inc., licensee of Station KVGO(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Spring Valley, Minnesota.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**